



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Lawrence Noble, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005-2111

APR 26 2010

RE: MUR 6021  
The Ballot Project, Inc.

Dear Mr. Noble:

On September 26, 2008, the Federal Election Commission notified your client, The Ballot Project, Inc., of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time. On October 20, 2008, the Commission notified your clients of a supplement to the initial complaint, and a copy of the supplement was forwarded to your clients at that time. On January 12, 2010, the Commission notified your clients of additional information from the complainant pertaining to the allegations in the complaint, and a copy of this additional information was forwarded to your clients at that time. Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on April 13, 2010, voted to dismiss the complaint as to The Ballot Project, and closed the file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, reading "Susan L. Lebeaux", is positioned above the typed name.

Susan L. Lebeaux  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENT: The Ballot Project**

**MUR 6021**

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7 **I. INTRODUCTION**

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9 The complaint in this matter alleges that the Ballot Project, a Section 527 organization  
10 that was active during the 2004 election cycle, violated the Act by failing to register and report as  
11 a political committee. Specifically, the complaint alleges that the Ballot Project retained and  
12 recruited law firms to remove Ralph Nader and Peter Miguel Camejo ("Nader-Camejo") from  
13 the ballot in at least 18 states, spending at least \$331,398 for this purpose, and soliciting at least  
14 \$2 million more in free legal services from law firms that sued Nader. As discussed below, the  
15 Commission has determined to exercise its prosecutorial discretion and dismiss the allegation as  
16 to the Ballot Project.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Facts**

19 According to the complaint, The Ballot Project made expenditures of at least \$331,398 to  
20 influence the 2004 presidential election. Complaint at 18. The Complaint maintains that these  
21 expenditures focused on spending designed to prevent Nader-Camejo from qualifying for a  
22 ballot, and concludes that such spending was subject to the Act's registration and reporting  
23 requirements, with which the Ballot Project failed to comply. Complaint at 13. In response to  
24 the complaint, the Ballot Project questions whether spending designed to prevent a federal  
25 candidate from qualifying for a ballot is an expenditure under the Act. Specifically, the Ballot  
26 Project contends that the Commission's distinction between funding a ballot access challenge  
27 and the defense of that challenge found in its Advisory Opinions is unconstitutional, noting that

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1 there “is no constitutionally sufficient justification for requiring a candidate to use funds raised  
2 under the Act’s limitations and prohibitions to advance a claim that an opponent’s ballot access  
3 efforts have not complied with state law, while allowing the opponent defending against the  
4 challenge to use money raised outside of those same limitations and prohibitions.” Ballot Project  
5 Response at 16. It argues that such a distinction stands in sharp contrast to *Davis v. FEC*, 128 S.  
6 Ct. 2759, 2774 (2008), where the Court stated that “imposing different contribution and  
7 coordinated party expenditure limits on candidates vying for the same seat is antithetical to the  
8 First Amendment.” *Id.* Additionally, the Ballot Project contends that a ballot access challenge  
9 undertaken independently of a candidate is outside of the purview of the Act, as it is “far more  
10 removed from being for the purpose of influencing a federal candidate than was the funding of  
11 activity of the candidate in AO 1996-39 who was defending her place on the ballot.” *Id.* at 17.

12 It appears that the Ballot Project is essentially a defunct organization. In response to the  
13 complaint, the Ballot Project states that it dissolved on September 12, 2005. Ballot Project  
14 Response at 2. The Commission has previously decided to take no further action where the  
15 entity was essentially defunct, with minimal or no assets, and had been inactive for several years  
16 with little prospect of resuming activity. *See* MUR 5534 (Business Alaska). In addition, while  
17 the activity at issue occurred in 2004, the complaint was not filed until 2008. Thus, among other  
18 reasons, the age of the alleged violations would create problems of proof and raise obstacles  
19 under the five-year statute of limitations. Under similar circumstances here, the Commission has  
20 determined to exercise its prosecutorial discretion and dismiss the allegations that the Ballot  
21 Project violated 2 U.S.C. §§ 433 and 434. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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